ASSISTANT SECRETARY OF DEFENSE

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FORCE MANAGEMENT
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DEPARTMENT OF DEFENSE
CIVILIAN PERSONNEL MANUAL (CPM)
CPM BASIC INSTALLMENT NO. 12

CPM Chapter 711, Labor-Management Relations, is issued herewith.

1. Remove CPM Chapter 711 in its entirety.

2. Add new pages as indicated below immediately following FPM Chapter 711.

CPM Identification	Insert Pages	Explanation of Changes
711	711-1 through 711-29 including Appendices A through D	Revises DoD policies and procedures concerning labor-management relations.

3. File this Installment Sheet immediately preceding CPM Chapter 272.

Attachment

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CPM CHAPTER 711: LABOR-MANAGEMENT RELATIONS
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Subchapter 1. Purpose and Applicability

1-1. PURPOSE. This CPM Chapter sets forth labor-management relations policies and procedures within the Department of Defense. It implements 5 U.S.C. Chapter 71 (Federal Service Labor-Management Relations Statute or the Statute); DoD Directive 1426.1; and the Rules and Regulations of the Federal Labor Relations Authority (FLRA or Authority), 5 CFR, Chapter XIV; the Federal Service Impasses Panel (FSIP or Panel), 5 CFR Chapter XIV; the Federal Mediation and Conciliation Service (FMCS), 29 CFR, Parts 1404 and 1425; the Assistant Secretary of Labor for Labor Management Relations (A/SLMR), 29 CFR, Parts 207-209; the General Accounting Office (GAO), 4 CFR, Part 22; and the Office of Personnel Management (OPM).

1-2. APPLICABILITY AND SCOPE

a. Except as provided in subsection b., below, the provisions of this Chapter and the Federal Service Labor-Management Relations Statute apply to the Office of the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, the Unified and Specified Commands, the DoD Inspector General, the Defense Agencies, and DoD Field Activities (herein after referred to collectively as the "DoD Components"), including nonappropriated fund instrumentalities under their jurisdiction.

b. This Chapter and the Statute shall not apply to:

(1) The National Security Agency, as provided in 5 U.S.C. 7103(a)(3)(D);

(2) Those DoD functional or organizational entities that the President has excluded from coverage by Executive Order pursuant to 5 U.S.C. 7103(b)(1)(see 3-4, below); or

(3) Non-U.S. citizen personnel employed at DoD installations or activities, except for those in the Republic of Panama. Relationships with labor organizations representing such non-U.S. citizen shall be consistent with pertinent intergovernmental agreements, local practices and customs, and DoD Instruction 1400.10.

c. Provisions of the Statute shall not apply to any DoD functional or organizational entities located outside the 50 States and the District of Columbia where the President has suspended such provisions pursuant to 5 U.S.C. 7103(b)(2)(see 3-5, below). This Chapter shall be applied consistent with any such suspensions.

1-3 DEFINITIONS. See Appendix B.

1-4. REFERENCES. See Appendix C.

1-5. EFFECTIVE DATE AND IMPLEMENTATION. This Chapter is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management & Personnel) within 180 days.

Subchapter 2. General Policies

2-1. BASIC PRINCIPLES. Labor-management relations in the Department of Defense shall be governed by the following policies and principles:

a. Effective labor-management relations are a basic part of the responsibility of all DoD managers, military and civilian, at all levels, wherever there are employees subject to the Federal Service Labor-Management Relations Statute.

b. Delegation to local managers of authority on personnel policies, practices and matters affecting working conditions helps to ensure meaningful employee participation and to avoid escalation of problems that should be resolved at lower levels. Therefore, such authority shall be delegated to the maximum feasible extent consistent with the need for uniformity (where such a need exists), efficiency, and effective direction and control.

c. Managers shall not interfere with the free choice of employees regarding labor organization membership and other representation matters. Under no circumstances shall managers initiate, circulate, or provide assistance in connection with the circulation of a petition to decertify a labor organization holding exclusive recognition. Nor shall they poll individual employees as to their membership in or desire to continue to be represented by such a labor organization.

d. Managers should take steps to establish positive and constructive relationships with labor organizations selected by employees to exclusively represent them. The emphasis in dealing with such organizations shall be not only on the resolution of issues and problems that arise at the worksite and during negotiations but also on the establishment of relationships and understanding that can help to prevent such problems. When disputes cannot be resolved without third-party assistance, the machinery established by the Statute, including the rules and regulations of third-party authorities, shall be appropriately complied with and utilized as expeditiously as possible in order to resolve such disputes.

e. Labor organizations that exclusively represent DoD employees have a legitimate interest in matters affecting the conditions of employment of those employees. To promote positive and constructive labor-management relationships, managers shall ensure that appropriate information concerning such matters is provided to labor organization representatives on a timely basis.

f. Managers shall ensure that the reserved management rights in 5 U.S.C. 7106(a) are retained. They must also retain the ability and authority to obtain the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the national security mission of the Department of Defense.

g. Managers shall ensure that negotiated conditions of employment promote equal employment opportunity.

h. Labor-management relations shall be given a high priority in the allocation of resources and manpower to ensure adequate professional staff resources and training of managers in this area.

2-2. RESPONSIBILITIES

a. Responsibility for the development of DoD policies and procedures regarding labor-management relations and for coordination of labor-management relations programs and activities throughout the Department rests with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) as set forth in DoD Directive 1426.1. The designee of the ASD(FM&P) for carrying out these functions, except for the most critical policy determinations, is the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD(CPP)). The DASD(CPP) is accordingly the Department's primary point of contact with the Federal Labor Relations Authority (FLRA). Primary national subdivisions shall submit any letter, petition, or other document to the Authority involving a policy issue, a negotiability dispute, and agency exception or opposition to an arbitration award only after consultation with and authorization from the DASD(CPP). The DASD(CPP) shall coordinate, as appropriate, with the Office of the General Counsel, Department of Defense (GC, DoD).

b. The Head of each primary national subdivision having jurisdiction over employees paid from both appropriated and nonappropriated funds shall designate a single official to act on his or her behalf in formulating labor-management relations policies applicable to both types of employees and to decide or recommend action on disputes involving both types of employees that may arise out of the labor-management relations program.

2-3. TRAINING

a. The commanding officer of a DoD activity at which there are one or more bargaining units consisting of civilian employees subject to this Chapter and the Federal Service Labor-Managment Relations Statute should arrange to attend a course in labor-management relations prior to or within six months of the date he or she reports to the activity, or within six months of the date a labor organization is certified as the exclusive representative for the first time at the activity, unless he or she has attended equivalent training.

b. An individual designated as Chairperson of the management negotiating team at a DoD activity should, unless he or she is experienced in labor negotiations, undergo appropriate negotiation training prior to the commencement of negotiations.

2-4. PROPOSALS TO CHANGE REGULATIONS. Nothing in this Chapter shall be considered to imply that the existence of established DoD-wide or primary national subdivision personnel policies or regulations on any matter prevents labor organizations holding exclusive recognition from presenting suggested changes or modifications in those policies or regulations to the officials responsible for them.

2-5. INTERPRETATION OF REGULATIONS. Questions as to interpretation of published policies or regulations of a primary national subdivision, the Department of Defense, or appropriate authorities outside the Department of Defense, may be referred to the head of the primary national subdivision concerned or designee.

a. When such questions involve the interpretation of DoD or higher authority regulations, they shall be referred by the primary national subdivision to the DASD(CPP) who will either render or, in coordination with the primary national subdivision, obtain an authoritative interpretation.

b. Questions of interpretation of regulations that arise (1) under a negotiated agreement with reference to material incorporated in that agreement, or (2) in a grievance context, shall be processed in accordance with whatever procedures have been agreed upon by the parties.

c. Questions of interpretation involved in a negotiability dispute shall be resolved in accordance with the procedure set forth in CPM 711.4-4.

2-6. CONFLICTS OF INTEREST. To avoid actual or apparent conflicts of interest between the activities of DoD personnel and their official responsibilities, it is the policy of the Department of Defense that:

a. Although the following individuals may join any labor organization, they may not act as a representative of, participate in the management of, or be represented by any such organization that is subject to the Federal Service Labor-Management Relations Statute:

(1) Management officials and supervisors (except that this subsection does not apply to supervisors in maritime occupations serving as officers or representatives of labor organizations that traditionally represent such supervisors in private industry and that held exclusive recognition for one or more units of such supervisors in any Federal Agency on October 29, 1969, or supervisors in units to which section 1271(a) of the Panama Canal Act of 1979 applies).

(2) Employees engaged in personnel work in other than a purely clerical capacity.

(3) Confidential employees.

b. No employee shall carry on any activities, as an officer or agent of a labor organization, that conflict or give the appearance of conflicting with the proper exercise of, or are incompatible with, his or her official duties or responsibilities. In the event such a conflict or incompatibility arises, the individual concerned shall be given a reasonable opportunity to correct the condition causing it. Should an apparent conflict or incompatibility arise with reference to an employee in a bargaining unit, consideration shall be given to the filing of an appropriate representation petition to determine whether the employee is properly included in the unit.

Subchapter 3. Recognition of and Dealings with Labor Organizations

3-1. GENERAL PROVISIONS

a. Solicitation of Membership and Support

(1) Activity employees may not be prohibited from soliciting membership or support on behalf of, or in opposition to, a labor organization on activity premises during the nonwork time of the employees involved (i.e., both those engaged in solicitation and those being solicited), provided there is no interference with the work of the activity.

(2) Activity employees may not be prohibited from distributing literature on behalf of, or in opposition to, a labor organization on activity premises in nonwork areas and during the nonwork time of the employees involved (i.e., both those engaged in distribution and those receiving literature), provided there is no interference with the work of the activity.

(a) Literature posted or distributed within a DoD activity must not violate any law, applicable regulations, provisions of a negotiated agreement, or the security of the DoD activity, or contain libelous material.

(b) Labor organizations shall be considered responsible for the content of literature distributed by their representatives.

(3) Subject to normal security regulations and reasonable restrictions with regard to the frequency, duration, location(s), and number of persons involved in such activities, labor organization representatives who are not employees of the activity may be permitted, upon request, to distribute literature or to solicit membership or support on activity premises in nonwork areas and during the nonwork time of the employees involved.

(a) Permission may be withdrawn with respect to any such activities that interfere with the work of the activity, or with respect to any representative who has engaged in conduct prejudicial to good order or discipline on activity premises.

(b) Where no labor organization holds exclusive recognition for the employees involved and permission is granted to one such organization for nonemployee representatives to engage in on-station organizing or campaigning activities, the same privilege shall be extended to any other requesting labor organization with equivalent status.

(c) Where the employees involved are represented by a labor organization holding exclusive recognition, permission shall not be granted for on-station organizing or campaigning activities by nonemployee representatives of other labor organizations except where a valid question concerning representation has been raised with respect to the employees involved, or where the employees involved are inaccessible to reasonable attempts by a labor organization, other than the incumbent, to communicate with them outside the activity's premises.

b. Use of Facilities. Where no labor organization holds exclusive recognition, activity facilities may be made available for the use of labor organizations where practicable, upon request, on an impartial and equitable basis, for such purposes as the posting of notices or membership meetings outside regular working hours. Where a labor organization holds exclusive recognition, the use of activity facilities by that organization is a proper subject for negotiation under the Federal Service Labor-Management Relations Statute.

c. Use of Official Time. Primary national subdivisions shall ensure that activities under their cognizance have established systems for the recording and maintenance of data on the amount of official time spent by employees on representational functions in accordance with requirements established by the OPM.

d. Furnishing of Information

(1) Lists of names, position titles, grades, salaries and/or duty stations of activity or unit employees shall be furnished to labor organizations upon request. Other information shall also be furnished as may be required by 5 U.S.C. 7114(b)(4).

(2) When a list of employees is furnished to a Regional Office of the FLRA for use in checking a labor organization's showing of interest in a representation proceeding, a copy of the list shall be furnished, without charge, to the petitioning organization and to any other labor organization qualifying as an intervenor.

e. Standards of Conduct for Labor Organizations. In any case in which a labor organization requests or holds exclusive recognition and a question arises as to whether the organization is in compliance with the Standards of Conduct set forth in 5 U.S.C. 7120, the activity concerned shall promptly furnish all available information concerning the matter to the head of the primary national subdivision or designee. Where the information available raises a substantial question as to compliance with the Standards of Conduct on the part of a labor organization seeking or holding exclusive recognition or national consultation rights, the head of the primary national subdivision or designee may refer the matter to the appropriate office of the FLRA or the Labor-Management Services Administration of the Department of Labor.

f. Payroll Withholding of Labor Organization Dues

(1) Arrangements between labor organizations and DoD activities for the voluntary payroll withholding of dues of labor organization members in the unit shall conform with the applicable requirements of 5 U.S.C. 7115.

(2) A supervisor excluded from a formal or exclusive unit on or before December 31, 1970, pursuant to section 24(d) of Executive Order 11491, as amended, may continue his/her allotment for withholding of labor organization dues in accordance with 5 CFR 550.322.

g. Right of Representation. DoD activities shall inform employees in bargaining units annually of their right to union representation as required by 5 U.S.C. 7114(a)(2)(B).

3-2. DEALINGS WITH LABOR ORGANIZATIONS HOLDING NATIONAL CONSULTATION RIGHTS

a. Granting National Consultation Rights. Upon written request by a labor organization, the Department of Defense or the primary national subdivision shall extend national consultation rights when the labor organization meets the criteria set forth in the regulations of the FLRA.

b. Obligation to Labor Organizations Holding National Consultation Rights. The Department of Defense or the primary national subdivision shall give labor organizations granted national consultation rights advanced notice of proposed substantive changes in conditions of employment affecting the employees they represent; provide them with an opportunity to comment on the proposed changes; and consider such comments before taking final action. Where a labor organization provides comments, the Department of Defense or the primary national subdivision shall respond in writing to the organization giving the reasons for taking the final action.

c. Review and Termination of National Consultation Rights. Where the Department of Defense or a primary national subdivision determines that a labor organization no longer represents enough employees under exclusive recognition to qualify for national consultation rights, it will terminate the national consultation rights in accordance with the regulations of the FLRA. Those regulations require that the labor organization be served in writing with the notice of intent to terminate national consultation rights, together with a statement of the reasons, not less than 30 days prior to the intended termination date. If the organization files a petition challenging the termination, the petition stays any further termination action pending disposition of the petition.

3-3. LABOR ORGANIZATIONS HOLDING EXCLUSIVE RECOGNITION

a. Granting Exclusive Recognition. The criteria set forth in Appendix A shall be applied in determining the appropriateness of a unit.

b. Obligation to Negotiate

(1) The obligation to negotiate over conditions of employment for employees in a bargaining unit exists at the level of the agency at which a labor organization holds exclusive recognition. Representatives of management and of the labor organization are obligated to meet at reasonable times and to negotiate in good faith on conditions of employment affecting those employees. The parties must approach negotiations with a sincere desire to reach agreement. They must also be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment. Finally, they must meet at reasonable times and convenient places as frequently as necessary and avoid unnecessary delays. The parties are not compelled to agree to any specific proposal or required to make a concession on any specific matter.

(2) The obligation to negotiate is limited by any Federal law; any Government-wide rule, regulation or policy; and any rule, regulation or policy issued at the Department of Defense or primary national subdivision level unless the FLRA has determined that no compelling need exists for such a rule, regulation or policy. There is no obligation to negotiate over those

matters listed in 5 U.S.C. 7106(b)(1) or matters which are not conditions of employment. The obligation extends only to the limits of the discretion of management at the level of exclusive recognition.

(3) The obligation to negotiate requires that management at the level of exclusive recognition provide a labor organization holding exclusive recognition for a unit of employees with adequate advance notice of changes in conditions of employment for the employees it represents so that the labor organization has a meaningful and reasonable opportunity to request negotiations as may be appropriate. This requires notice to the labor organization and an opportunity for the labor organization to bargain prior to the actual effectuation of the change. Thus, where management at the level of exclusive recognition contemplates taking an action that will impact on conditions of employment of unit employees, it shall notify the labor organization holding exclusive recognition for that unit of employees sufficiently in advance of the proposed action so that this obligation may be satisfied.

(4) Various DoD organizational elements issue rules, regulations, and policies affecting the conditions of employment of unit employees, the implementation of which is nondiscretionary on the part of management at the level of exclusive recognition. These DoD organizational elements may be a higher organizational level or they may be the host in a host-tenant relationship.

(a) Upon receipt of such a rule, regulation, or policy, management at the level of exclusive recognition shall promptly provide a copy to a labor organization holding exclusive recognition for a unit of employees and inform the labor organization of its implementation plans. When external deadlines are imposed that are beyond the control of management at the level of exclusive recognition, notification should be as expeditious as possible. Except where the parties have agreed otherwise, management shall, upon request, enter into discussions with the labor organization with the object of reaching a mutual understanding as to how the rule, regulation, or policy is to be implemented locally (to the extent that local management has discretion in its implementation) and its impact on unit employees.

(b) To permit management at the level of exclusive recognition to satisfy its obligation to negotiate and to avoid unfair labor practice charges, DoD organizational elements that issue rules, regulations, or policies dealing with conditions of employment for unit employees should notify management at the level of exclusive recognition as early as possible of any proposed changes affecting such conditions of employment, and to the maximum extent possible, give them sufficient time to satisfy their obligation prior to implementing the changes.

c. Collective Bargaining Agreements

(1) General Policy

(a) Collective bargaining agreements apply only within the unit(s) for which negotiated and shall not be contrary to any Federal law; any Government-wide rules, regulations or policy; or any published rule, regulation, or policy of the Department of Defense or the cognizant primary national sub-

division in effect as of the effective date of the agreement, except a published rule, regulation or policy for which (1) a waiver or exception has been approved at the request of one or both of the parties to permit negotiation on a particular subject, or (2) the FLRA has determined that no compelling need exists.

(2) Federal law and rules and regulations implementing 5 U.S.C. 2302 regarding prohibited personnel practices supersede conflicting provisions in a collective bargaining agreement. Other substantive Government-wide, DoD and cognizant primary national subdivision rules, regulations and policies, which do not merely transmit requirements imposed by law, do not supersede such provisions during the term of that agreement. However, provisions must be brought into conformance with those rules, regulations, and policies at the time the agreement is renegotiated or when it is renewed or extended and such renewal or extension will result in its being in effect for more than three years and 90 days since it was last brought into conformance with applicable laws and regulations.

(3) No agreement will exceed three years in duration from its effective date. An agreement may be renewed or extended for a specific period (not to exceed three years for each renewal or extension) when the parties so agree, subject to the requirement set forth in subparagraph (2), above.

d. Review of Negotiated Agreements

(1) Pursuant to 5 U.S.C. 7114(c), the Assistant Secretary of Defense (Force Management and Personnel) shall review and approve or disapprove agreements negotiated at the primary national subdivision level (i.e., where the union holds exclusive recognition at that level) and at the DoD Dependents Schools Headquarters level. The Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD(CPP)) is the designee of the ASD(FM&P) for this function. Heads of primary national subdivisions are delegated the authority to review and approve or disapprove all other agreements. They may delegate this authority to heads of subordinate offices, commands, or activities consistent with subparagraph (2), below.

(2) All collective bargaining agreements, and any supplements and amendments thereto, shall be immediately forwarded upon execution for review by a professionally competent staff at a higher organization level. The specific date of execution and the name and address of the labor organization's designated representative should be clearly indicated in the agreement or the transmittal letter. The reviewing authority should be informed of any dispute with the labor organization with regard to the execution date.

(3) The review of collective bargaining agreements, and any supplements and amendments thereto, should be completed as soon as possible. If they conform to applicable Federal law; Government-wide rules, regulations, and policies; and published DoD or primary national subdivision rules, regulations, and policies they shall be approved and the parties shall be notified of the approval. Should one or more provisions be determined to conflict with such laws, rules, regulations or policies, the agreement shall be disapproved and the parties shall be notified and provided with information clearly identifying each conflict so that they may take appropriate action. Any disapproval notice must be served in written form on the union's designated representative by certified mail or delivered in person within 30 days from the date of execution of the agreement by the parties.

(4) Where the negotiated agreement, or supplement or amendment thereto, is reviewed by the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD(CPP)), the following procedures apply:

(a) The DASD(CPP) shall be informed of the initiation of negotiations on an agreement and of any proposed action that affects the life of an agreement.

(b) The DASD(CPP) shall informally monitor the progress of negotiations and be available, to the extent possible, to provide assistance during the negotiation process.

(c) The DASD(CPP) shall be notified whenever it is anticipated that the assistance of the Federal Mediation and Conciliation Service or the Federal Service Impasses Panel will be sought, or upon receipt of notice that a labor organization has requested such assistance.

(d) Before responding to a request from a labor organization for a written allegation of nonnegotiability, the issues in dispute shall be discussed with the DASD(CPP).

(e) Four copies of executed agreements, or supplements or amendments thereto, shall be forwarded no later than on the date of execution to the DASD(CPP). Where a final draft is available before that date, a copy shall be provided as early as possible in advance of the formal submission.

(f) Following publication of an approved agreement, or supplements or amendments thereto, six copies shall be forwarded to the DASD(CPP).

3-4. EXCLUSIONS FROM COVERAGE OF THE STATUTE. Under 5 U.S.C. 7101(b)(1), the President may issue an order excluding DoD functional or organizational entities from coverage under the Statute if the President determines that: (a) they have as a primary function intelligence, counterintelligence, investigative, or national security requirements and considerations; and (b) the provisions of the Statute cannot be applied to them in a manner consistent with national security requirements and considerations. Requests for such exclusions, together will full justifications, shall be forwarded to the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) for appropriate action. The requests should include information on the numbers of civilian employees involved and whether they are currently represented by a labor organization(s).

3-5. SUSPENSIONS OF PROVISIONS OF THE STATUTE. Under 5 U.S.C. 7101(b)(2), the President may issue an order suspending any provision of the Statute with respect to DoD functional or organization entities outside the 50 States and the District of Columbia if the President determines that the suspension is necessary in the interest of national security.

a. The President issued Executive Order 12391 (CPM 711.C-12) suspending certain provisions of the Statute with regard to DoD United States citizen employees who are employed outside the United States as defined in 5 U.S.C. 7103(a)(18), with the exception of those employed in the Republic of Panama.

The Order ensures that national security interests are not adversely affected by collective bargaining between United States Forces and labor organizations representing DoD civilian employees overseas. The suspension authority is directed at labor relations matters that would substantially impair DoD's implementation of any treaty or agreement and allied minutes or understandings between the United States and host nations.

b. Section 2 of the Order requires that disputes as to whether a particular matter is covered by the suspension be referred to the Secretary of Defense, whose decision in such disputes shall be made after consultation with the Secretary of State, or designee, and shall be final. The Secretary of Defense may delegate this authority, but only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. The functions assigned to the Secretary of State may not be delegated or assigned to anyone below the level of an Assistant Secretary of State.

c. Requests to effect a suspension shall be directed to the Secretary of Defense through the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)). Requests for suspensions in the Office of the Secretary of Defense or the DoD Field Activities shall be endorsed to the ASD(FM&P) by the appropriate Under Secretary of Defense or Assistant Secretary of Defense. Requests from other DoD Components shall be signed by the Head of the DoD Component. Each request shall fully document the collective bargaining issue or dispute involved, identify the bargaining unit, and demonstrate how the labor relations matter would substantially impair implementation of a specific treaty or international agreement. Addressees will carefully review each request for a suspension in light of the restrictive criteria noted in the Order.

d. The ASD(FM&P) shall coordinate with the DoD General Counsel, the Assistant Secretary of Defense for International Security Affairs, and appropriate officials of the Department of State in developing a recommendation on the proposed suspension. The national offices of affected labor organizations shall be provided an opportunity to present their views on any proposed suspension. The fully coordinated response shall be forwarded by the ASD(FM&P) to the Secretary of Defense for a final decision.

Subchapter 4. Resolution of Labor-Management Disputes

4-1. REPRESENTATION PROCEEDINGS. The regulations of the FLRA set forth procedures for handling the various types of disputes and appeals that may arise in connection with the processing of the different representation petitions. Primary national subdivisions and their subordinate commands and activities shall comply with those regulations with respect to the posting of notices, observance of time limits, and similar requirements. The criteria and limitations in 5 U.S.C. 7112 and in Appendix A of this Chapter shall be applied by management in determining the appropriateness of a unit.

4-2. GRIEVANCE AND ARBITRATION PROCEEDINGS

a. General Policy

(1) Under 5 U.S.C. 7121(a)(1), negotiated agreements must include procedures for the settlement of grievances, including questions of arbitrability. Grievances not satisfactorily resolved are subject to binding arbitration. Arbitration may be invoked only by the exclusive labor organization or the DoD activity under whose collective bargaining agreement the dispute arose and is being processed. When the services of an arbitrator are required, they may be obtained and paid for in accordance with Part 37 of the Federal Acquisition Regulations, or as otherwise agreed to by the parties.

(2) Except in the case of matters set forth in 5 U.S.C. 7121(d) and (e), the negotiated grievance procedure is the sole procedure for resolving grievances that fall within its coverage.

b. Exceptions to Arbitration Awards

(1) Arbitration awards are final and binding on the parties. However, except for an award relating to a matter described in 5 U.S.C. 7121(f), either party can file an exception to an award with the FLRA on the basis that the award is contrary to any law, rule, or regulation or on other grounds similar to those applied by Federal courts in private sector labor-management relations. The matters described in 5 U.S.C. 7121(f) are adverse actions under 5 U.S.C. 7512 and actions based on unacceptable performance under 5 U.S.C. 4302 as well as similar matters that arise under other personnel systems. Appeals from those awards are discussed in CPM 711.4-2.c., below.

(2) A request for an exception shall be forwarded with full justification, within 10 calendar days of issuance of the award, to the head of the primary national subdivision or designee. If that individual agrees that exceptions are warranted, all pertinent information, including a copy of the award, shall be promptly forwarded to the DASD(CPP). The DASD(CPP), upon concurrence, shall authorize further processing of the exception in accordance with the regulations of the FLRA. If a conclusion is reached that an exception is not warranted, the head of the primary national subdivision or designee, or the DASD(CPP), as appropriate, shall issue instructions for compliance with the award.

(3) The head of a primary national subdivision or designee shall promptly provide the DASD(CPP) with a copy of an exception to an award filed by a labor organization, together with the award and any other pertinent documents. An agency opposition to the exception shall be provided to the DASD(CPP) for concurrence.

c. Arbitration Awards Relating to Matters Described in 5 U.S.C. 7121(f)

(1) Under 5 U.S.C. 7121(f), an exception to an award involving an adverse action under 5 U.S.C. 7512 or an unacceptable performance action under 5 U.S.C. 4302 may not be filed with the FLRA. Instead, such awards are subject to judicial review in the same manner and on the same basis as if those matters had been decided by the Merit Systems Protection Board (MSPB). The grounds and procedures for judicial review of a decision of the Board is set forth in 5 U.S.C. 7703. Under that section, only the Director of the OPM may seek judicial review of such matters.

(2) A request for judicial review under 5 U.S.C. 7121(f) and 5 U.S.C. 7703 shall be submitted as promptly as possible to the head of the cognizant primary national subdivision or designee. If review is determined to be warranted, the OPM shall be immediately requested to seek judicial review. A copy of the request shall be provided to the DASD(CPP).

4-3. NEGOTIATION IMPASSES

a. Deadlocks in negotiations may develop on some issues despite good faith bargaining by both parties. Every effort should be made to avoid or resolve apparent deadlocks and to achieve agreement without unduly protracted negotiations. Such efforts should include painstaking reappraisal of positions by those participating in the negotiations. The use of joint fact-finding committees, the seeking of guidance from higher echelons within the primary national subdivision or the labor organization involved, or both, and/or the use of a third party for consultation or advice may be helpful.

b. Where a negotiation impasse continues to exist despite diligent efforts to reach agreement on all issues, the assistance of the Federal Mediation and Conciliation Service (FMCS) may be requested in accordance with the procedures set forth in the regulations of the FMCS. Mediation shall be considered the primary means of resolving negotiation impasses within the Department of Defense.

c. When a negotiation impasse remains unresolved despite the efforts of the FMCS or other mediator agreed upon by the parties, the issues involved may be referred to the Federal Service Impasses Panel by either or both parties in accordance with the Panel's regulations. A copy of any such referral shall be promptly forwarded to the head of the primary national subdivision or designee.

d. Arbitration may be used in attempting to resolve negotiation impasses after consultation with the head of the primary national subdivision or designee and subject to approval of the proposed procedure by the Panel.

4-4. NEGOTIABILITY APPEALS

a. General Policy. When an issue develops during negotiations over the negotiability of a proposal, management negotiators should make every effort to develop and obtain the labor organization's acceptance of a feasible, legal alternative to the proposal. If such efforts prove unsuccessful and the labor organization requests in writing a statement of position on the negotiability of the proposal, the management representative should immediately consult, by telephone, with the head of the primary national subdivision or designee prior to issuing a response to that request. No written allegation of nonnegotiability should be provided to the labor organization except in response to a written request for one. All labor organization written requests for an allegation of nonnegotiability should be answered in writing by management within 10 days after the date of receipt of the written request.

b. Appeals Procedures

(1) If the negotiability issue remains unresolved, the labor organization may file a negotiability appeal with the FLRA. The labor organization's appeal must meet the requirements of the Authority's regulations which, among other things, requires service of the appeal on the Director, Workforce Relations, Training and Staffing Policy, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), Room 3D269, The Pentagon, Washington, D.C. 20301-4000.

(2) Upon receipt of a copy of an appeal filed with the Authority concerning a negotiability issue, the Director, Workforce Relations, Training and Staffing Policy shall immediately provide a copy to the primary national subdivision concerned, if the latter has not been served a copy. Ordinarily, the primary national subdivision, with the assistance of the Director, shall develop an agency statement of position for submission to the Authority.

(3) The Director, Workforce Relations, Training and Staffing Policy shall prepare the agency's statement of position in negotiability appeal cases arising from a review of a negotiated agreement by the DASD(CPP). The Director may also develop, on a case by case basis, the agency's statement of position in other cases. When this is the case, the Director shall notify the primary national subdivision involved.

c. Exceptions to Regulations. When a proposal appears to conflict with a regulation of the primary national subdivision concerned or the Department of Defense, and there is no apparent conflict with applicable law or regulations of appropriate authority outside the Department of Defense, either party may request a regulatory exception to permit negotiation on the proposal. A party should refer such requests to the head of the primary national subdivision or designee and serve a copy on the other party. The head of the primary national subdivision or designee shall process issues as follows:

(1) When the issue is whether an exception to one or more published policies or regulations of the primary national subdivision should be granted to permit negotiations, the head of the primary national subdivision or designee shall forward a copy of the referral to the DASD(CPP). The head of the primary national subdivision or designee shall discuss the proposed decision with the DASD(CPP) prior to issuance.

(2) Where the issue is (a) whether an exception to one or more published DoD policies or regulations should be granted to permit negotiation on the proposal, or (b) whether a particular regulation was issued at the primary national subdivision level, the head of the national primary national subdivision shall refer the case file as promptly as possible to the DASD(CPP) together with the primary national subdivision's analysis of the issue and its recommendation and rationale therefor.

(3) A request for an exception to a published policy or regulation may be denied only on the basis of a determination that: (a) the regulation deals with a matter concerning which agencies are not obligated to negotiate under the Federal Service Labor-Management Relations Statute; (b) the regulation results from the exercise of a management right established by 5 U.S.C. 7106; or (c) a compelling need for the policy or regulation appears to exist under criteria established by the FLRA in its regulations. Subordinate levels may not make decisions on requests for exceptions to published policies or regulations issued at the DoD or primary national subdivision level.

4-5. UNFAIR LABOR PRACTICES

a. General Procedures

(1) To maximize settlement prospects and avoid costly and time-consuming litigation whenever possible, management at the level of exclusive recognition should seek agreement with the exclusive labor organization that either party, before filing an unfair labor practice charge with the FLRA (except in cases involving apparent violations of 5 U.S.C. 7116(b)(7)), shall provide the other party with a copy of the proposed charge and meet, on request, to discuss the matter and explore its resolution.

(2) Management shall promptly investigate all charges, proposed or otherwise, and discuss them with representatives of the labor organization involved, so as to determine all relevant facts and, if possible, produce an acceptable resolution of the matter without resorting to more formal proceedings.

(3) If a complaint is issued by the Regional Office of the FLRA, local management shall promptly notify the head of the primary national subdivision or designee.

(4) Management shall thoroughly and professionally prepare for and present its case at any hearing held on the case.

b. Job Actions

(1) 5 U.S.C. 7116(b)(7) proscribes strikes, work stoppages, and slowdowns. It also prohibits picketing that interferes with an agency's operations by labor organizations representing DoD employees. Primary national subdivisions shall establish, issue, and periodically review contingency planning guidance concerning such job actions. The guidance shall be applicable to all subordinate organizations having employees subject to the Federal Service Labor-Management Relations Statute.

(2) In proceeding against a labor organization under 5 U.S.C. 7116(b)(7), it will be necessary to establish that:

(a) Employees or organization representatives are participating or have participated in a prohibited act; and

(b) The prohibited act was ordered, approved or authorized by a responsible official of the organization; or that when apprised of participation in the prohibited act by organization representatives and/or by employees represented by the organization, the responsible organization official did not take prompt steps to disavow the act and order those involved to cease their participation.

(3) The following procedures apply to situations involving actions proscribed by 5 U.S.C. 7116(b)(7):

(a) When information reaches the head of a DoD activity that a representative of a labor organization with members employed at the activity has indicated that such members may or will engage in an act prohibited by 5 U.S.C. 7116(b)(7), or when it is apparent that employees are actually engaging in such an act, an appropriate representative of the activity or primary national subdivision concerned shall immediately seek to contact the head of the local labor organization and apprise that individual of the situation. If the head of the labor organization disavows or withdraws any threatening statements and there is no evidence that the organization ordered, approved, or authorized a prohibited act, and if prompt steps are taken by the organization to disavow any such act and order its members to cease their participation, no further action shall be taken against the organization.

(b) If (1) there is evidence that the labor organization ordered, approved, or authorized the prohibited act (even though it took prompt steps to stop the act); (2) the labor organization fails to take prompt steps to disavow the prohibited act and order its members to cease their participation; or (3) the labor organization denies that a prohibited act has occurred, an unfair labor practice charge should be filed with the cognizant Regional Office of the FLRA in accordance with applicable provisions of the Authority's regulations.

(c) Upon receipt of information indicating that acts prohibited under 5 U.S.C. 7116(b)(7) have occurred or been threatened, the head of the primary national subdivision or designee shall, if the labor organization involved is affiliated with a national or international organization, notify the head of such organization and inform him or her of the situation. The DASD(CPP) should also be notified. At this time, such informal discussions as may be necessary to clarify the facts should be held and, if required, further investigation shall be made by the primary national subdivision.

(d) DoD management representatives shall cooperate fully with representatives of the Regional Office of the FLRA in connection with expedited investigations and other proceedings stemming from the filing of a charge based upon a violation of 5 U.S.C. 7116(b)(7).

(4) Individual employees engaging in any strike activity prohibited by 5 U.S.C. 7311 shall be subject to disciplinary procedures and to penalties established by applicable law and regulations without regard to other provisions of this Chapter.

4-6. JUDICIAL REVIEW

a. Most final orders of the FLRA may be appealed to an appropriate United States Court of Appeals pursuant to 5 U.S.C. 7123. To ensure consistency of interpretation and full consideration of the policy and program implications of such appeals, requests for judicial review of decisions of the Authority, or requests to intervene in judicial proceedings, shall be forwarded through channels to the Office of the General Counsel (OGC), DoD, for review and approval in coordination with the DASD(CPP).

b. Staff attorneys authorized to represent the Department of Defense in connection with court appeals of decisions of the Authority shall furnish copies of case documents on a timely basis to the DASD(CPP).

c. The DASD(CPP) shall be promptly notified when a primary national subdivision learns that a labor organization has initiated court action in a matter arising out of its relationship with a DoD activity.

Subchapter 5. Information and Reports Required

5-1. INFORMATION REQUIRED. In addition to other requirements set forth in this Chapter, primary national subdivisions shall furnish the following to the DASD(CPP):

a. A copy of any letter issued by a primary national subdivision that (1) denies a request by a labor organization for national consultation rights, or (2) provides a labor organization with notice of intent to terminate its national consultation rights.

b. A copy of any written communication submitted to the OPM that requests guidance or advice on a labor-management relations matter.

c. A copy of any petition for exclusive recognition filed by a labor organization, or any request for unit consolidation, that would result in a unit extending beyond a single DoD activity or installation or a unit encompassing employees of two or more DoD Components.

5-2. REPORTS

a. Primary national subdivisions within the Department of Defense shall submit the following to the OPM as required by the Federal Personnel Manual, Chapter 711, Subchapter 2-8.e.

(1) An updating of data on recognitions and agreements.

(2) Major changes in regulations on labor-management relations, copies of arbitration awards and negotiated and renegotiated agreements, and information on new or revised units.

b. Interagency Report Control Number 1060-OPM-AN has been assigned to these reporting requirements.

APPENDIX A

Guide for Determining Appropriateness of Bargaining Units

A-1. POLICY. The determination of the appropriateness of bargaining units under the Federal Service Labor-Management Relations Statute (CPM 711.E-1) is a function of the FLRA. The Authority is governed by the following basic policies:

a. A unit may be established on any agency, plant, installation, functional or other basis that will ensure a clear and identifiable community of interest among the employees in the unit and promote effective dealings with, and efficiency in the operation of, the agency involved. These three criteria must be given equal weight.

b. No unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.

c. No unit may include:

(1) Any management official or supervisor (except that this prohibition does not apply to units of supervisors in maritime occupations represented by labor organizations that traditionally represent such supervisors in private industry and that held exclusive recognition for such units in any Federal Agency on October 29, 1969, or to supervisors in units to which section 1271(a) of the Panama Canal Act of 1979 (CPM 711.C-4) applies);

(2) Any confidential employee; i.e., an employee who assists and acts in a confidential capacity to an official who formulates or effectuates management policies in the field of labor relations, and who therefore has regular access to confidential labor relations material;

(3) Any employee engaged in Federal personnel work in other than a purely clerical capacity;

(4) Any employee engaged in administering the provisions of 5 U.S.C. 71;

(5) Both professional employees and nonprofessional employees unless a majority of the professional employees vote for inclusion in the unit;

(6) Any employee engaged in intelligence, counterintelligence, investigative, or security work that directly affects national security; or

(7) Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

d. No unit may include any employee of a DoD subdivision that the President has excluded from coverage of the Federal Service Labor-Management Relations Statute by Executive Order issued pursuant to 5 U.S.C. 7103(b).

A-2. UNIT CRITERIA. The factors and considerations listed below shall be applied in developing management's position with respect to the appropriateness of units. When management concludes that a proposed unit would not be appropriate and the petitioning labor organization cannot be persuaded to change its position, management should make a full presentation before the FLRA of the basis for its belief that the unit is not appropriate. The consolidation of two or more existing appropriate units will not necessarily result in an appropriate unit; therefore, management should consider each proposed unit consolidation in the light of the criteria and factors set forth herein.

a. Community of Interest

(1) A determination as to the existence of a clear and identifiable community of interest, sufficient to warrant recognition of the employees concerned as constituting an appropriate unit, requires the exercise of judgment and must be made in light of the specific facts and circumstances. An appropriate unit is one in which the particular grouping of employees therein is such that it makes sense for them to deal collectively with management through a single voice. It is also one in which the proposed grouping of employees does not exclude other employees who share the same clear and identifiable community of interest.

(2) In evaluating proposed units from the standpoint of community of interest, such factors as the following, among others, should be considered:

- Similarity or relationship of skills
- Distinctiveness of functions performed
- Extent of integration of work processes
- Commonality of working conditions
- Place or places of work
- Extent of employee interchange
- Organizational structure
- Governing personnel and administrative regulations
- Locus of significant authority for personnel and labor relations program decisions
- Common supervision
- Pay systems
- Tenure of employees
- Labor relations history

Many of these factors are interrelated. Following are comments concerning some of them:

(a) Organizational Structure. In evaluating the effect of organizational structure on the appropriateness of a proposed unit, consideration should be given to the common employment interest of the employees in an organizational entity such as a primary national subdivision, command, activity or subdivision thereof, as well as the commonality of supervision exercised and other factors.

(b) Similarity of Skills or Occupations. Units based on a trade, craft, or other distinct occupation normally will consist of a homo-

pattern characterized by several relatively small units at an activity or one which would have the effect of separating employees who share common functions, working conditions, or supervision) will not promote effective labor-management dealings.

(2) Factors to be considered include:

(a) The size and composition of the unit under consideration in relation to the organization's total work force and the size, composition, and number of exclusive units already in existence within the organization and any others currently being sought.

(b) The traditional jurisdiction or representation pattern of the labor organization involved in relation to the types of unit proposed, and the nature and history of relationships with that organization and other labor organizations holding or seeking recognition.

(c) The organization level(s) encompassed by the unit under consideration, the level at which negotiation will take place, and the potential at that level for meaningful negotiation with respect to personnel policy matters and working conditions of the employees involved.

(d) Personnel management resources of the organization and their availability for day-to-day dealings and negotiation with the labor organization concerned as well as those representing other actual or potential units.

(3) A number of the factors listed under "community of interest" may also be pertinent here, such as organizational structure, commonality of supervision, integration of work processes, and coverage of personnel regulations and practices, among others.

c. Efficiency of Operations

(1) The unit under consideration, to be found appropriate, must be reasonably expected to contribute to efficiency of operations. The question to be asked here is whether negotiation and subsequent dealings on matters of personnel policy and working conditions with the particular group of employees encompassed in the proposed unit, separately from others, will contribute to efficiency.

(2) Pertinent factors include:

(a) Nature, size, and location of the unit in relation to the rest of the organization.

(b) The functional relationship of unit personnel to others in the organization.

(c) Physical location of unit employees in relation to others; that is, the degree of separation or intermixture.

geneous group of skilled employees with basically similar training and experience working together with their trainees and helpers. Among factors to be considered in determining the appropriateness of such a unit are the existence of separate supervision and whether all such employees within the organization would be included.

(c) Distinctiveness of Function. Employees with dissimilar skills may have a community of interest as parts of a larger group working together in the performance of a distinct function, which may form the basis for an appropriate unit.

(d) Working Conditions. Consideration should be given to whether there are special work problems or conditions to which the employees in question are subject, as well as their physical location and work sites and whether facilities (tool cribs, locker rooms, and cafeterias) are used in common.

(e) Integrated Work Process. Although there may be functionally distinct organizational elements at an activity, the existence of an integrated work process, in which there is a continuous flow of work among organizational elements, may make a single unit appropriate rather than a number of separate smaller units.

(f) Personnel Regulations and Programs. Whether employees in a proposed unit are covered by the same merit promotion program; are in the same or different areas for RIF bumping purposes; and are covered by the same medical, recreational, and other employment-related programs may have a bearing on community of interest. Whether all employees so covered are included should also be considered.

(g) Labor Relations History. When a particularly effective pattern of collective dealings has become well established over the years, this should be given weight in considering proposed units which would represent a departure from the established pattern. However, when there are two or more units at a DoD activity, the fact that relationships have been satisfactory should not stand in the way of possible consolidation to reduce or eliminate unit fragmentation.

(3) A conclusion that employees in the proposed unit do not share a community of interest normally will be sufficient to warrant opposing the unit. On the other hand, the fact that a clear and identifiable community of interest does appear to exist among the employees in a proposed unit is not sufficient basis, in itself, for approval of the unit. All three of the criteria established by the Statute and set forth in this Guide must be considered and any proposed unit should be viewed in relation to alternative possibilities that might better meet the criteria.

b. Effective Dealings

(1) To determine that a unit is appropriate, it must be found that the unit is such as to promote or contribute to effective dealings at the level of exclusive recognition between management and a labor organization. Generally speaking, a proposed unit that would contribute to fragmentation (that is, a

(d) The customary flow of work assignments to and completed work from the personnel of the unit in question in relation to other parts of the organization.

(e) The anticipated effect of the proposed unit on personnel management in terms of the resources available and required, morale factors, etc.

(f) Other costs that would be incurred in negotiating and administering agreements for smaller units as opposed to a broader single unit.

A-3. APPLICATION OF CRITERIA. The factors and criteria discussed above must be applied to the particular situation and conditions involved in each petition for exclusive recognition, and will not necessarily produce uniform results throughout the Department of Defense. However, the following generalizations are valid in most cases:

a. A proposed unit that would consist of all eligible employees of a single DoD activity or installation is appropriate.

b. A proposed unit that would include both appropriated fund and nonappropriated fund employees is not appropriate.

c. A proposed unit that would cross primary national subdivision lines--that is, include employees of more than one primary national subdivision of the Department of Defense--is not appropriate.

APPENDIX B

Definitions

B-1. The terms defined in 5 U.S.C. 7103 have the same definitions when used in this Chapter.

B-2. Appropriate Unit. A grouping of employees found to be appropriate under 5 U.S.C. 7112 for the purpose of exclusive representation by a labor organization in dealing with management.

B-3. Employee. See the definition in 5 U.S.C. 7103(a)(2). Within the Department of Defense, this definition includes civilian employees paid from nonappropriated fund instrumentalities (NAFIs) (including off-duty military personnel with respect to employment with a DoD NAFI when such employment is civilian in nature and separate from their military assignment). Military personnel are not "employees" for purposes of this Directive with respect to any matter related to their military status or assignment. Contractor personnel also are not covered by the definition. Pursuant to section 1271(a) of the Panama Canal Act of 1979 (CPM 711.E-5), the definition includes non-U.S. citizen employees of the Department of Defense in the Panama Canal area.

B-4. Primary National Subdivision. Within the Department of Defense, the following are considered primary national subdivisions as defined in the regulations of the FLRA:

a. The Office of the Secretary of Defense.

b. The Joint Chiefs of Staff.

c. The Military Departments.

d. The Defense Agencies (except the National Security Agency and those that the President has excluded from coverage by Executive Order pursuant to 5 U.S.C. 7103(b)).

e. The National Guard Bureau.

f. The Army and Air Force Exchange Service.

g. The Department of Defense Dependents Schools.

APPENDIX C

References

C-1. The Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71

C-2. DoD Directive 1426.1, "Labor-Management Relations in the Department of Defense," (see Appendix D)

C-3. DoD Instruction 1400.10, "Employment of Foreign Nationals in Foreign Areas," December 5, 1980

C-4. Public Law 96-70 "The Panama Canal Act of 1979," September 27, 1979

C-5. Regulations of the Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority, and Federal Service Impasses Panel, 5 CFR Chapter XIV

C-6. Defense Acquisition Regulation

C-7. Regulations of the Federal Mediation and Conciliation Service, 29 CFR Parts 1404 and 1425

C-8. Regulations of the Assistant Secretary of Labor for Labor-Management Relations, 29 CFR Parts 207-209

C-9. Regulations of the General Accounting Office, 4 CFR, Part 22

C-10. Federal Personnel Manual, Chapter 711

C-11. Federal Acquisition Regulations

C-12. Executive Order 12391, "Partial Suspension of Federal Service Labor-Management Relations," November 4, 1982

1400.25-M
CPM 711.D

Department of Defense
DIRECTIVE

November 10, 1988
NUMBER 1426.1

ASD(FM&P)

SUBJECT: Labor-Management Relations in the Department of Defense

References: (a) DoD Directive 1426.1, subject as above, June 29, 1981 (hereby canceled)
(b) Title 5, United States Code, Chapter 71, "The Federal Service Labor-Management Relations Statute"

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to reflect current authority and responsibility for the establishment of labor-management relations programs and policies covering employees of the Department of Defense and for the exercise of certain functions in implementation of reference (b).

B. APPLICABILITY AND SCOPE

1. Except as provided in subsection B.2., below, this Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities.

2. This Directive does not apply to the National Security Agency/Central Security Service (NSA/CSS) as provided in Section 7103(a)(3)(D) of reference (b) or to organizational or functional entities within the Department of Defense that the President has excluded from coverage pursuant to Section 7103(b) of reference (b).

C. POLICY

It is DoD policy that DoD managers at all levels shall carry out their responsibilities in labor-management relations with full consideration of the rights of DoD employees and labor organizations representing them, as well as of the need for timely mission accomplishment, increased productivity, and efficiency of operations. Effective intra-DoD coordination with respect to labor-management relations issues and developments shall be given priority attention.

D. RESPONSIBILITY

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

a. Establish basic principles governing relationships between DoD management and labor organizations representing DoD employees, consistent with reference (b).

b. Accord exclusive recognition at the DoD level to qualifying labor organizations under Sections 7111(a) and 7120(a) of reference (b).

c. Grant national consultation rights at the DoD level to qualifying labor organizations, or terminate such rights, under Section 7113(a)(1) of reference (b).

d. With right of redelegation:

(1) Establish labor-management relations programs, policies, and procedures; issue guidance to DoD managers on labor relations matters; and coordinate labor relations programs and activities within the Department of Defense.

(2) Develop or review and clear submissions to the Federal Labor Relations Authority (FLRA) that set forth the DoD position on issues before the Authority, subject to coordination with the General Counsel, Department of Defense (GC, DoD), on matters involving legal issues.

(3) Represent the Secretary of Defense in negotiation of agreements with labor organizations accorded exclusive recognition at the DoD level, pursuant to Section 7114(a) of reference (b).

(4) Approve or disapprove negotiated agreements covering units of DoD employees, pursuant to Section 7114(c) of reference (b).

(5) Represent the Department of Defense in dealings with the FLRA, the Office of Personnel Management (OPM), and other agencies on labor-management relations matters.

2. The General Counsel, Department of Defense (GC, DoD), shall:

a. Develop or review and clear proposals for judicial review of decisions of the FLRA under Section 7123(a) of reference (b) in cases arising within the Department of Defense, subject to coordination with respect to policy and program implications with the ASD(FM&P).

b. Communicate with the Department of Justice (DoJ) to seek judicial review of FLRA decisions and provide or authorize the provision by DoD Components of such legal support as the DoJ may require in connection with such cases.

E. EFFECTIVE DATE

This Directive is effective immediately.

William H. Taft, IV
Deputy Secretary of Defense